

2200-16

ELLIOTT & ELLIOTT, P.A.
ATTORNEYS AT LAW
721 OLIVE STREET
COLUMBIA, SOUTH CAROLINA 29205
selliot@elliottlaw.us

SCOTT ELLIOTT

TELEPHONE (803) 771-0555
FACSIMILE (803) 771-8010

October 30, 2009

VIA E-FILING

Charles L.A. Terreni, Esquire
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RE: Review of Avondale Mills, Incorporated's Rates
Approved in Order No. 2009-394
Docket No. 2009-342-WS


Dear Mr. Terreni:

Enclosed please find the Reply Brief filed on behalf of Avondale Mills, Incorporated in the above referenced docket. By copy of this letter, I am serving all parties of record (the Chair has ruled that the members of the Aiken County Legislative Delegation are not parties to this docket and consequently are not being served).

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.



Scott Elliott

SE/mlw

Enclosures

cc: Parties of record w/enclosures

STATE OF SOUTH CAROLINA
BEFORE THE
PUBLIC SERVICE COMMISSION
DOCKET NO. 2009-342-WS

RE: Review of Avondale Mills,)	REPLY BRIEF OF
Incorporated's Rates Approved)	AVONDALE MILLS, INC.
in Order No. 2009-394)	

The Office of Regulatory Staff ("ORS") recommends that the Public Service Commission ("Commission") amend Order No. 2009-394 to provide for the stepped implementation of the rates approved in Order No. 2009-394 over a period of months. The ORS further recommends that the step increase in rates should be tied to "continued verifiable improvements" in the infrastructure and management of the Avondale system. For the reasons set out, the ORS recommendations should be rejected, the petition and the Application in this matter dismissed and judgment entered in favor of Avondale Mills, Inc.

The ORS acknowledges that Order No. 2009-394 issued in Docket No. 2008-460-WS is a valid order, and that the rates authorized by Order No. 2009-394 cannot be retroactively repealed or adjusted (ORS Brief at page 3). Further, ORS acknowledges that the record is devoid of any "specific figures, information, data or similar evidence to establish that the rates set in the Commission order are improper or excessive." (ORS Brief at page 4). The fact that Order No. 2009-394 is valid, that the rates approved in Order No. 2009-394 are valid, and that there is no evidence of record to establish that the rates approved in Order No. 2009-394 were excessive or improper, compels the conclusion that rates approved in Order No. 2009-394 be upheld and the application be dismissed.

Notwithstanding its concession that Order No. 2009-394 was valid, that the rates approved in Order No. 2009-394 were valid and that the record is devoid of evidence to suggest the rates approved in Order No. 2009-394 were excessive or improper, the ORS argues that the Commission has the authority to order short term intermediate relief which would reduce Avondale's rates and implement them in steps over a period of months so as to mitigate the impact of the rate increase on Avondale's rate payers (Respondent's Brief at page 5).

The justification advanced by the ORS for short term relief is the evidence of record that the rates granted Avondale in Order No. 2009-394 had an immediate impact on the rate payers and were in excess of what they had planned or budgeted for (ORS Brief at page 5). However, as argued in its brief, Avondale's customers and the members of the Aiken County Delegation had actual notice of the rates approved by Order No. 2009-394 in Docket No. 2008-460-WS, and the evidence of record in Docket No. 2008-460-WS clearly exposed the size and impact of the rate increase requested on Avondale's customers (Avondale Brief at pages 4-5). It is undisputed that the ORS evidence before the Commission conclusively proved that the rates requested and approved in Docket No. 2008-460-WS would increase residential water rates by 400%, residential sewer rates by 495% and irrigation rates by 700%. Moreover, the Commission was concerned with "rate shock" in Docket No. 2008-460-WS. For the express purpose of avoiding rate shock in future proceedings, the Commission approved the "pass-through mechanism" in Avondale's rates (Order No. 2009-394 at page 6). Both Avondale's customers and the Aiken County Legislative Delegation knew or should have known of the impact that these rates would have on them if granted (Avondale Brief at page 8).

The ORS argues that the Commission should "take action to put these rates in place gradually in order to provide the customers of the system with a reasonable amount of time to

adjust their water usage and budget for the substantial increase in their monthly water and sewer bills.” (ORS Brief at page 4). However, Avondale began billing its customers the rates approved in Order No. 2009-394 in July of 2009. As testified to by Jack Altherr, a substantial number of Avondale’s customers have paid their July bills. Avondale continues to bill its customers at its approved rates. Both logic and common sense dictates that Avondale’s customers have already experienced the impact of the rate increase and that a substantial number of Avondale’s customers have adjusted to the first rate increase they have experienced since 1980. Moreover, the record reflects that Avondale’s customers have adjusted to the rates approved in Order No. 2009-394 by reducing their water consumption. There is no evidence of record that reducing Avondale’s rates to 1980 levels will encourage further conservation and reduce consumption. Logic and common sense would compel the conclusion that a reduction in Avondale’s rates would lead to increased consumption.

The ORS argues that Sections 58-5-270 and 58-5-320 grant the Commission the authority to review Avondale’s rates and grant the short term reduction in Avondale’s rates as requested. However, the ORS concedes that the Commission is powerless to act without “substantial evidence to support the finding of a just and reasonable rate” (ORS Brief at page 8). The record in this docket supports and upholds the rates approved in Order No. 2009-394. There is no evidence in this docket to support any other water or sewer rate other than the rates approved in Order No. 2009-394. Accordingly, the Commission is powerless to alter the rates approved by Order No. 2009-394, even in the short term.

Moreover, the Commission held in Order No. 2009-394 that Avondale had demonstrated the need for the rates approved, a fact the ORS concedes in its brief (ORS Brief at page 7). The Commission found it in the best interests of both Avondale and its customers to approve rates in

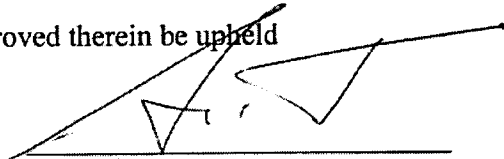
Order No. 2009-394 to allow Avondale “to earn a reasonable operating margin to provide it with the means to maintain its aging water and wastewater system properly and to comply with DHEC and Commission standards” (Order No. 2009-394 at page 7).

The ORS concedes that Avondale has made substantial investment in its water and sewer system since the Commission issued Order No. 2009-394 on June 18, 2009 (ORS Brief at page 6). The record is replete with evidence of Avondale’s success in reducing its water loss and in achieving adequate, stable water pressure (Avondale Brief at pages 7-9; ORS Brief at pages 5-6). Notwithstanding the fact that Avondale has expended considerable amounts to upgrade its water and sewer facilities in reliance on the revenues approved in Order 2009-394, the ORS recommends that the Commission reduce the revenues authorized Avondale by Order No. 2009-394 short term, require Avondale to make specific improvements to its system with reduced revenue and tie step increases in rates over a period of months to continued verifiable improvements. (ORS Brief at page 9). However, ORS fails to suggest any facts or evidence to support any “specific metrics regarding infrastructure and service standards” which the Commission is authorized to require of Avondale (ORS Brief at page 5). Nor is there any evidence of record that would support a finding that reducing Avondale’s revenue would better enable it to maintain its aging water and wastewater system and comply with standards that the ORS has yet to suggest in this docket.

Mr. Altherr testified that during the three year period preceding Order No. 2009-394, Avondale’s shareholders had expended in excess of \$2.5 million for the operation of Avondale’s water and wastewater systems, while the revenue from Avondale’s customers was less than \$350,000. Given Avondale’s costs and expenses approved in Order No. 2009-394, ordering Avondale to return to rates set in 1980, even if temporarily, is punitive, arbitrary and capricious.

The recommendations of the ORS are without any factual support in this record. Indeed, the ORS has failed to point to any evidence of record that would support short term reduction in rates or the continued verifiable improvements it urges on Avondale.

For the reasons set out herein, in Appellant's Brief, and during oral arguments at trial herein, Avondale respectfully requests that the recommendations of the ORS be rejected, and that Order No. 2009-394 and the rates approved therein be upheld

A handwritten signature in black ink, appearing to read 'Scott Elliott', is written over a horizontal line.

Scott Elliott
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205
803-771-0555 (P)
803-771-8010 (F)
selliott@elliottlaw.us
Attorney for Avondale Mills, Inc.

October 30, 2009

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading to the persons indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Review of Avondale Mills, Incorporated's Rates
Approved in Order No. 2009-394

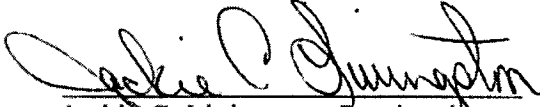
DOCKET NO.: 2009-342-WS

PARTIES SERVED: Jeffrey M. Nelson, Esquire
Shealy Boland Reibold, Esquire
Office of Regulatory Staff
P. O. Box 11263
Columbia, SC 29211

Michael Hunt
509 Laurel Drive
Graniteville, SC 29829

Joe A. Taylor
105 Laurel Drive
Graniteville, SC 29829

PLEADING: REPLY BRIEF OF AVONDALE MILLS, INC.


Jackie C. Livingston, Paralegal

October 30, 2009